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MICHAEL D. OAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978
No: 78-423

FRED CHEIMAN AND NICHOLAS SARDELIS, JR.,
Petitioners

-VS-

UNITED STATES OF AMERICA,
Respondent.

PETITIONERS' REPLY TO GOVERNMENT'S RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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The Government contends that the trial court took only questions of law under advisement under Petitioners' Rule 29(a) motion. A careful review of the transcript of the trial indicates that no express ruling was made by the court upon that portion of Petitioners' Rule 29(a) motion which requested a judgment of acquittal based upon the fact that the Government failed to present sufficient evidence to show that an extension of credit, as defined by Title 18, United States Code, §891, was made. Petitioners submit that failure to issue an express ruling on this question, when coupled

with the Court having taken under advisement the question of law, constitutes the taking under advisement of this crucial question of fact.

That being the case:

"A court may not properly take action in a cause while an undetermined motion is pending before it unless the subsequent determination of the motion either way cannot affect the validity of the action taken." 60 CJS Motions & Orders, §38, pg. 53.

Further:

"Delay of the court in announcing its decision on a motion will not operate to the prejudice of the party in whose favor the decision is made, and the court must give effect to the decision as of the time when the motion was made." 60 CJS Motions & Orders, §38, pg. 54.

With this in mind it is all the more obvious that the failure of the trial court to rule on that portion of Petitioners' Rule 29(a) motion dealing with the failure of the Government to introduce sufficient evidence to show an extension of credit, as defined by Title 18, United States Code, §891, prior to the continuation of the trial was highly prejudicial to the substantial rights of Petitioners as defendants in a federal criminal prosecution.

CONCLUSION

For the above reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Sixth Circuit.

Respectfully submitted,

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Dated: December 5, 1978